HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

WRIT APPEAL No. 84 OF 2007

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Between:

Vinayaka Mini Modern ice Mill,
Unduru, rep. by its Proprietor,
Edala Lakshmi Kantham, Samalkota

.... Appellant

AND

The Assistant Engineer (Rural),
A.P. Transco,
Samalkot & another

.....Respondents

:: J U D G M E N T ::

Counsel for the appellant : Shri A.K. Kishore Reddy

Dated: 25.01.2007

Per G.S. SINGHVI, C.J.

This appeal is directed against order dated 12.12.2006 passed by the learned Single Judge in Writ Petition No.22130 of 2006, whereby he declined to nullify the action of the respondents to remove service meter and transformer from the premises of the appellant.

The appellant rice mill is a proprietary concern. It is a consumer of electricity since 1999 under LT Category III A with a contract load of 52.68 H.P. On account of the alleged non-payment of bills for the months of February and March 2005, the competent authority of A.P. Transco disconnected the supply of electricity to the appellant's unit with effect from 27.03.2005. Subsequently, the agreement entered into between the parties for supply of electricity was terminated, vide order dated 30-6-2006.

The appellant did not challenge the disconnection of electricity with effect from 27.03.2005 or termination of the agreement on 30.06.2006, but filed writ petition on 22.10.2006 for grant of a declaration that the action of the respondents to remove service meter No.654 and transformer from its premises without issuing notice is illegal, arbitrary and discriminatory. In the affidavit filed by her, Smt.Edala Lakshmi Kantham, the proprietor

of the appellant averred that she had been regularly paying current bills and never committed default; that notice proposing termination of agreement was not served on her and the story of acceptance of first notice by her son and pasting of the second notice on the walls of the rice mill in the presence of Security Guard Shri Srinivasa Rao was concocted. She further averred that reply dated 14.10.2006 sent by the respondents to her legal notice dated 05.09.2006 was clearly misleading and the removal of service meter along with transformer was wholly arbitrary, illegal and unwarranted.

In the counter filed by Shri Y. L. Pratap Kumar, Assistant Divisional Engineer, A.P. Transco, Electricity Department, Samalkot Town and Mandal, East Godavari District, the deponent claimed that after disconnection of the power supply, the petitioner (the appellant herein) did not apply for restoration of connection within three months and now it is liable to pay minimum charges amounting to Rs.35,290/-.

Smt.Edala Lakshmi Kantham filed rejoinder affidavit reiterating her assertion that there was no default in the payment of current bills and the action taken by the respondents is wholly arbitrary.

The learned Single Judge held that electricity bill issued to the consumer with a stipulation that supply will be disconnected in the event of non-payment of dues amounts to notice and no further notice is required to be given for disconnecting the supply. The learned Single Judge referred to proceedings No. DE/O/KDA/KP/F.Doc/D.No:939/06 dated 28.07.2006 issued by Divisional Engineer (Operation), Kakinada of Eastern Power Distribution Company Limited terminating LT agreement in respect of service No.619/654, which stood in the name of the appellant and held that if the petitioner is desirous of availing power supply, then it has to apply for service connection afresh and furnish security deposit, development costs and other necessary charges.

Shri A.K. Kishore Reddy reiterated the stand taken by the proprietor of the appellant in the affidavit filed by her and argued that the action of the respondents to remove the service meter and transformer from the premises of the appellant should be declared as arbitrary, illegal and unjustified because the Electricity Act, 2003 does not empower the officers of the licencee to remove service meter etcetera on the pretext of non-payment of dues of electricity. Shri Reddy emphasized that before disconnecting power supply to the unit of the appellant, the competent authority of A.P. Transco did not give notice to its proprietor and argued that the impugned action is liable to be declared nullity on the ground of violation of the rules of natural justice.

We have given serious thought to the arguments of the learned counsel, but have not felt impressed. Rather, we are convinced that the appeal is liable to be dismissed because, in the writ petition filed by it, the appellant did not challenge the action of the respondents to disconnect the supply of electricity to its unit or the termination of agreement. Shri A.K. Kishore Reddy tried to wriggle out this insurmountable difficulty in the path of the appellant by asserting that order terminating the agreement was not served on his client, but we are unable to agree with him that the appellant was handicapped in challenging the termination of the agreement. Even if it is assumed that till the filing of the writ petition, the proprietor of the appellant was not in know of the termination of agreement, at least after receipt of copy of written statement, she could have made an application under the Right to Information Act, 2005 (for short 'the 2005 Act') for supply of the copy of that order or amended the writ petition with a prayer for issue of a direction to the respondents to produce the record including order dated 30.08.2006 and also make prayer for quashing the same. However, the fact of the matter is that the proprietor of the appellant neither made an application under the 2005 Act for supply of the copy of order dated 30.08.2006 nor she sought leave of the Court to challenge the order terminating the agreement. Therefore, the

Court cannot issue a direction to the respondents for re-installation of the service meter and transformer in the premises of the appellant industry ignoring the fact that as on today, there does not subsist relationship of supplier and consumer between A.P. Transco and the appellant.

There is another serious lacuna in the constitution of the writ petition. For the reasons best known to it, the appellant did not implead A.P. Transco as party to the writ petition. The Assistant Engineer (Rural) and the Assistant Divisional Engineer, A.P. Transco, Electricity Department who were impleaded as parties to the writ petition and the appeal can represent the company but they cannot substitute the company which has a corporate entity and is entitled to sue and be sued in its own name.

For the reasons stated above, the appeal is dismissed. However, liberty is given to the appellant to avail appropriate legal remedy for quashing the action of the concerned authority to terminate the agreement and for restoration of supply of electricity to its unit.

As a sequel to dismissal of the writ appeal, W.A.M.P.No.137 of 2007 filed by the appellant for interim relief is also dismissed.

G.S. SINGHVI, C.J.

C.V. NAGARJUNA REDDY, J.

25.01.2007
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